

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Mobility Spectrum, LLC)	File No. 0003382436
)	
Application for 700 MHz Band Licenses, Auction)	
No. 73)	

ORDER

Adopted: December 31, 2008

Released: December 31, 2008

By the Deputy Chief, Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. In this Order, we review the above-referenced Auction 73 Form 601 application of AT&T Mobility Spectrum, LLC (“AT&T Mobility”) and find that the public interest would be served if the application is granted. We therefore direct the Mobility Division of the Wireless Telecommunications Bureau (“Bureau”) to process the application consistent with this Order and the Commission’s rules.

II. BACKGROUND

A. Auction 73

2. Auction 73 offered 1,099 licenses in the 700 MHz band, involving a total of 62 megahertz located in the 698-806 MHz spectrum. The 700 MHz band licenses may be used for flexible fixed, mobile, and broadcast uses, including fixed and mobile wireless commercial services; fixed and mobile wireless uses for private, internal radio needs; and mobile and other digital new broadcast operations. These uses may include two-way interactive, cellular, and mobile television broadcasting services. The licenses offered in Auction 73 included: 176 Economic Area (“EA”) licenses (12 megahertz each) in the A Block; 734 Cellular Market Area (“CMA”) licenses (12 megahertz each) in the B Block; 176 EA licenses (6 megahertz each) in the E Block; 12 Regional Economic Area Grouping (“REAG”) licenses (22 megahertz each) in the C Block; and one nationwide license of 10 megahertz, to be used as part of the 700 MHz Public/Private Partnership, in the D Block.

3. Auction 73 began on January 24, 2008.¹ The auction ended on March 18, 2008, with 101 bidders winning a total of 1090 licenses.² The Bureau released an accepted for filing public notice listing applications filed by 100 of the 102 applicants on April 22, 2008.³ On June 26, 2008, the Commission granted applications filed by 64 of the applicants.⁴

B. Description of AT&T Mobility

4. AT&T Mobility is a direct, wholly-owned subsidiary of AT&T Mobility LLC, which is an indirect wholly-owned subsidiary of AT&T Inc. ("AT&T").⁵ AT&T is a communications holding company incorporated in the State of Delaware with principal offices in San Antonio, Texas,⁶ and headquartered in Dallas, Texas.⁷ Through its subsidiaries and affiliates, AT&T is a provider of communications services, including wireless services, local exchange and long-distance voice services, data/broadband services and high-speed Internet access, Wi-Fi, and IP-based communications services to businesses.⁸

5. AT&T provides wireless services through AT&T Mobility LLC.⁹ AT&T Mobility LLC has 72.9 million customers and, for fiscal year 2007, had revenues of approximately \$42.7 billion.¹⁰ It

¹ See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, AU Docket No. 07-157, *Public Notice*, 22 FCC Rcd 18141 (WTB 2007).

² Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008). One of the winning bidders was a consortium, and two of its members filed individual applications as required under our rules, resulting in 102 applicants.

³ Wireless Telecommunications Bureau Announces That Applications for 700 MHz Band Licenses Are Accepted for Filing, *Public Notice*, 23 FCC Rcd 6722 (WTB 2008).

⁴ Wireless Telecommunications Bureau Grants 700 MHz Band Licenses, *Public Notice*, 23 FCC Rcd 10134 (WTB 2008).

⁵ AT&T Mobility Spectrum LLC, FCC Form 601, File No. 0003382436, Amended Exhibit A: Ownership at 1 (filed Apr. 8, 2008); AT&T Mobility Spectrum LLC, FCC Form 602, File No. 0003382431, Indirect Ownership Attachment at 1 (filed Apr. 2, 2008) (stating that AT&T Mobility, which is held through a number of intervening entities that are wholly-owned subsidiaries of AT&T, is the only direct interest holder in the Applicant).

⁶ AT&T Inc., Form 10-K, at 1 (Feb. 27, 2008) ("AT&T Form 10-K"), available at <http://www.att.com/gen/investor-relations?pid=5691> (last visited Dec. 30, 2008).

⁷ AT&T, Corporate Profile, at 1 ("AT&T Corporate Profile"), available at <http://www.att.com/gen/investor-relations?pid=5711> (last visited Dec. 30, 2008).

⁸ AT&T Form 10-K at 1, 4; AT&T Corporate Profile at 1, 3 (displaying "all segments of the Company Overview"). AT&T provides broadband, long distance, and local voice service to over 58.9 million access lines to customers and has 14.7 million High-Speed Internet subscribers, with a concentration in twenty-two states. AT&T Corporate Profile at 2, 5. The twenty-two states are Alabama, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin. See *id.*; see also AT&T Form 10-K at 1. AT&T also provides satellite television service through strategic alliances and provides bundled offerings, such as AT&T HomezoneSM, which combines AT&T/DISH Network with AT&T Yahoo!® High Speed Internet, and AT&T U-verseSM services, including AT&T U-verseSM TV, AT&T Yahoo!® High Speed Internet, and Voice over Internet Protocol ("VoIP") services. AT&T Form 10-K at 2 (stating that AT&T is providing AT&T U-verseSM service in limited parts of 11 markets as of December 2006); AT&T Corporate Profile at 3. Further, AT&T provides directory publishing and advertising services. AT&T Form 10-K at 1, 5; AT&T Corporate Profile at 1.

⁹ AT&T Form 10-K at 2, 3.

holds spectrum licenses in all fifty states, the District of Columbia, Puerto Rico, and the United States Virgin Islands,¹¹ and has a network footprint that covers over 290 million people.¹² AT&T provides digital service on its network, operating primarily on 800 MHz cellular and 2 GHz Personal Communications Services (“PCS”) spectrum,¹³ using Global System for Mobile Communications (“GSM”) and General Packet Radio Service (“GPRS”) technology, along with Enhanced Data rates for GSM Evolution (“EDGE”) and High Speed Downlink Packet Access/Universal Mobile Telephone System (“HSDPA/UMTS”) technology for wireless broadband services.¹⁴

III. DISCUSSION

6. We have reviewed AT&T Mobility’s Auction 73 application and find that the public interest would be served if it is processed in accordance with this Order and the Commission’s rules. Consistent with the Commission’s recent decision regarding the Auction 73 applications of Union Telephone Company and Cellco Partnership d/b/a Verizon Wireless,¹⁵ we do not apply the Commission’s standard competitive analysis to the Auction 73 application of AT&T Mobility. In light of the Commission’s statement in that order that it intends to apply its standard competitive analysis prospectively to spectrum acquired via auction as well as via transactions, we note that if we were to apply the standard competitive analysis to the instant application, it would evidence that competitive harm is unlikely in the mobile telephony markets that would be affected by grant of the application. For purposes of our analysis, we will use the definitions for product market, spectrum input market, and the related initial spectrum screen (of 95 megahertz) discussed in the *Union Telephone/Verizon Wireless Order* and the transaction orders cited therein.¹⁶

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¹⁰ AT&T Corporate Profile at 2; About Wireless Services from AT&T, at 1, *available at* <http://www.wireless.att.com/about/> (last visited Dec. 30, 2008).

¹¹ AT&T Corporate Profile at 2.

¹² AT&T, 2007 Online Annual Report, Wireless, at 1, *available at* http://www.att.com/Investor/ATT_Annual/wireless/index.html (last visited Dec. 30, 2008).

¹³ AT&T Form 10-K at Exhibit 12 n.7.

¹⁴ *Id.* at 2; AT&T Corporate Profile at 5; AT&T, Wireless Technology, at 1, *available at* <http://www.wireless.att.com/about/our-technology.jsp> (last visited Dec. 30, 2008).

¹⁵ Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless, File No. 0003371176, *et al.*, *Memorandum Opinion and Order*, FCC 08-257 (rel. Nov. 13, 2008) (“*Union Telephone/Verizon Wireless Order*”).

¹⁶ *See id.* at ¶¶ 11-16. *See also* Application of AKD Holdings, LLC, Alaska DigiTel, LLC, and GCI, Inc. For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-10, *Memorandum Opinion and Order*, DA 08-1882, at ¶ 14 (WTB rel. Aug. 8, 2008) (“*GCI-Alaska DigiTel II Order*”); Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12481-82 ¶ 31 (2008) (“*Verizon-RCC Order*”), *recon. pending*; Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent For Assignment of Licenses and Authorizations, WT Docket No. 07-265, *Memorandum Opinion and Order*, 23 FCC Rcd 2234, 2236-37 ¶ 10 (2008) (“*AT&T-Aloha Order*”); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20306 ¶ 15 (2007) (“*AT&T-Dobson Order*”).

We note that the Commission recently revised the definitions of the product market and the input market for spectrum (which also affects the initial screen) that it applies in its competitive review. *See* Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory (continued....)

A. Market Definition

7. *Product Market Definition.* As just noted, for our analysis, we use the same product market definition as discussed in the Commission's *Union Telephone/Verizon Wireless Order* and the transaction orders cited therein.¹⁷ In the *Union Telephone/Verizon Wireless Order*, the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services,¹⁸ but analyzed all of these product markets under the combined market for mobile telephony service.¹⁹ Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission found that this approach provides a reasonable assessment of any potential competitive harm resulting from the transactions under review.²⁰

8. *Geographic Market Definition.* Consistent with the *Union Telephone/Verizon Wireless Order*, we use Component Economic Areas ("CEAs") and CMAs as the geographic market definition. In its recent wireless transaction orders, the Commission has applied the "hypothetical monopolist test" and found that the relevant geographic markets are local, are larger than counties, may encompass multiple

(Continued from previous page)

Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 08-258, at ¶¶ 45-47, 53, 62-68 (rel. Nov. 10, 2008) ("*Verizon Wireless-Atlantis Order*"); Sprint Nextel Corporation and Clearwire Corporation Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, FCC 08-259, ¶¶ 33-40, 53, 61-74 (rel. Nov. 7, 2008) ("*Sprint Nextel-Clearwire Order*"), Erratum (rel. Nov. 10, 2008).

¹⁷ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 11.

¹⁸ See *id.* See also *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14876 ¶ 25 (2006) ("*GCI-Alaska DigiTel I Order*"); Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-76, *Memorandum Opinion and Order*, 21 FCC Rcd 13580, 13594 ¶ 19 (2006) ("*DoCoMo-Guam Order*"); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11541 ¶ 26 (2006) ("*ALLTEL-Midwest Wireless Order*"); Applications of Nextel Communications, Inc. and Sprint Corp., WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13983 ¶ 38 (2005) ("*Sprint-Nextel Order*"); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13068 ¶ 28 (2005) ("*ALLTEL-Western Wireless Order*"); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. For Consent to Transfer Control of Licenses and Authorizations, Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corp. For Consent to Assignment and Long-Term De Facto Lease of Licenses, and Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC For Consent to Assignment of Licenses, WT Docket Nos. 04-70, 04-254, 04-323, *Memorandum Opinion & Order*, 19 FCC Rcd 21522, 21558 ¶ 74 (2004) ("*Cingular-AT&T Wireless Order*").

¹⁹ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 11. See also *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

²⁰ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 11. See also *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068-69 ¶¶ 29-30; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21559-60 ¶¶ 77, 79.

counties, and, depending on the consumer's location, may even include parts of more than one state.²¹ In these orders the Commission identified two sets of geographic areas that effectively may be used to define local markets – CEAs and CMAs.²² Because these two sets of geographic areas come from different sides of the equation – demand in the case of CEAs, supply in the case of CMAs – the Commission has found them to be useful cross-checks on each other and, together, they help ensure that our analysis does not overlook local areas that require more detailed analysis.²³

9. *Input Market for Spectrum.* We next examine the application in light of the input market for spectrum associated with the provision of mobile telephony services, using the standard discussed in the *Union Telephone/Verizon Wireless Order*. There, the Commission included in its analysis the following spectrum bands as “suitable” for the provision of mobile telephony services – approximately 200 megahertz of cellular, broadband PCS, and specialized mobile radio (“SMR”) spectrum as well as 80 megahertz of 700 MHz band spectrum (in the 698-806 MHz band) throughout the nation – bringing the total amount of spectrum suitable for mobile telephony services nationwide to approximately 280 megahertz.²⁴

10. *Market Participants.* As discussed in the *Union Telephone/Verizon Wireless Order* and wireless transaction orders cited therein, when computing initial measures of market concentration, the Commission limits its analysis of transactions involving mobile telephony services to cellular, PCS, SMR, and 700 MHz facilities-based service providers, and excludes satellite service providers, wireless

²¹ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 12. See also *Verizon Wireless-Atlantis Order*, FCC 08-258, at ¶ 49; *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶ 51; *Verizon-RCC Order*, 23 FCC Rcd at 12484 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542-43 ¶¶ 29-30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶¶ 34-35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

²² *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 12. See also *Verizon Wireless-Atlantis Order*, FCC 08-258, at ¶ 49; *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶ 51. The Commission has chosen CEAs and CMAs for its data analysis because both are consistent in order of magnitude with its local market definition and because each brings a different consideration to the analysis. CEAs are designed to represent consumers' patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market – and actually provide – service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission's licensing programs have to a certain degree shaped the mobile telephony market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105; see also *Verizon-RCC Order*, 23 FCC Rcd at 12484-85 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876-77 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45.

²³ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 12. See also, e.g., *Verizon Wireless-Atlantis Order*, FCC 08-258, at ¶ 49; *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶ 51; *Verizon-RCC Order*, 23 FCC Rcd at 12484-85 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11546 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

²⁴ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 13. See also *Verizon-RCC Order*, 23 FCC Rcd at 12486 ¶ 43; *AT&T-Dobson Order*, 22 FCC Rcd at 20312-14 ¶¶ 30-31.

Voice over Internet Protocol (“VoIP”) providers, mobile virtual network operators (“MVNOs”), and resellers from consideration.²⁵ In addition, in the context of the above-referenced application and consistent with the Commission’s approach in the *Union Telephone/Verizon Wireless Order* and the transactions orders cited therein, we consider Advanced Wireless Services (“AWS-1”) and Broadband Radio Services (“BRS”) providers market participants in our in-depth analysis of individual local markets not eliminated by our initial screen to the extent that they provide mobile telephony services.²⁶

B. Initial Screen

11. When examining the effect of proposed transactions, the Commission generally applies a two-part initial “screen” that identifies those local markets in which there is no competitive harm arising from the transaction or spectrum acquisition. One part of the screen utilizes the post-transaction Herfindahl-Hirschman Index (“HHI”) of market concentration in conjunction with the change in the HHI, which is calculated based on providers’ subscriber market shares.²⁷ Since the acquisition of “greenfield” spectrum at auction does not result in service overlaps, the HHI screen would not be triggered in any of the markets associated with the licenses for which AT&T Mobility was the highest bidder in Auction 73.²⁸

12. The second part of this screen examines the input market for spectrum available for the provision of mobile telephony services.²⁹ Under the *Union Telephone/Verizon Wireless Order* and the

²⁵ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 14. See also *Verizon-RCC Order*, 23 FCC Rcd at 12487-88 ¶ 48; *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. See GlobalCom, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited Dec. 30, 2008); GlobalStar Satellite Phone Services - New Lower Pricing Plans, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited Dec. 30, 2008). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. The Commission also does not consider wireless VoIP providers as providing the same functionality as mobile telephony providers because the service they provide now is nomadic rather than mobile. See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544-45 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

²⁶ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 13. See also, e.g., *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33, 12488 ¶ 48; *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 35.

²⁷ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 15. See also, e.g., *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12482 ¶ 32, 12489-90 ¶ 52; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15.

²⁸ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 15.

²⁹ See *id.* See also, e.g., *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12482 ¶ 32, 12489-90 ¶ 52; *AT&T-Aloha Order*, 23 FCC Rcd at 2237 ¶ 10; *AT&T-Dobson Order*, 22 FCC Rcd at (continued....)

transaction orders cited therein, the second part of the screen, if applied to this application, would identify the markets in which this application would result in spectrum aggregation in amounts of 95 megahertz or more out of a total of 280 megahertz of spectrum suitable for the provision of mobile telephony service.³⁰ While we would not include AWS-1 and BRS spectrum in the initial spectrum screen for the purpose of evaluating the application,³¹ we would consider the extent to which AWS-1 or BRS licenses are in fact available *locally*, and would include the spectrum associated with them in the local spectrum input market in our detailed, case-by-case analysis of markets caught by the initial screen.³² Applying the 95 megahertz screen to AT&T Mobility's Auction 73 application, if we were to do so, would result in seven CMAs that require further competitive review.³³

C. Market-by-Market Analysis

13. If we were to apply further competitive review of each of these seven CMAs, we would find that it is unlikely that the grant of the application of AT&T Mobility for licenses associated with Auction 73 would result in competitive harm in the seven CMAs identified by the initial screen. Consistent with the *Union Telephone/Verizon Wireless Order* and the wireless transaction orders cited therein, further competitive review of each of these CMAs would include, among other things, the determination of: (1) the total spectrum available for mobile telephony use; (2) the particular applicant's portion of available spectrum; (3) licensees in the market and their spectrum holdings; (4) licensees currently providing service in the market; (5) whether current service providers, who may be capacity constrained in the near-term, can access additional spectrum in the market either through auction or on the secondary market; and (6) licensees currently holding spectrum that could enter the market to provide service.³⁴ For these seven CMAs, upon evaluation of this data and similarly to the conclusions the Commission reached in the *Union Telephone/Verizon Wireless Order* and the *AT&T-Aloha Order*

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20307 ¶ 16.

³⁰ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 15. See also, e.g., *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33, 12489-90 ¶ 52; *AT&T-Aloha Order*, 23 FCC Rcd at 2237 ¶ 10; *AT&T-Dobson Order*, 22 FCC Rcd at 20312-14 ¶¶ 30-31. This initial spectrum aggregation screen of 95 megahertz is approximately one-third of the 280 megahertz of cellular, broadband PCS, SMR, and 700 MHz spectrum suitable for mobile telephony. See *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14 n.61; *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33, 12489-90 ¶ 52; *AT&T-Dobson Order*, 22 FCC Rcd at 20312-13 ¶¶ 30-31. As noted above, the Commission subsequently adopted a revised spectrum screen in orders addressing the Sprint Nextel Corporation-Clearwire Corporation and Verizon Wireless-Atlantis Holdings LLC transactions. See also *Verizon Wireless-Atlantis Order*, FCC 08-258, at ¶ 64; *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶ 74.

³¹ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 15. See also *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33; *AT&T-Dobson Order*, 22 FCC Rcd at 20314-15 ¶¶ 32-34.

³² See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 15. See also *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33; *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 35.

³³ The following is a list of the seven CMAs triggered by the 95 megahertz initial screen and the range of spectrum holdings for AT&T Mobility on a county-by-county basis: CMA097 Bakersfield, CA (99 MHz), CMA112 Corpus Christi, TX (104 MHz), CMA168 Tallahassee, FL (99 MHz), CMA359 Delaware 1-Kent (99 MHz), CMA432 Kansas 5-Brown (67 to 102 MHz), CMA468 Maryland 2-Kent (89 to 99 MHz), and CMA691 Virginia 11-Madison (89 to 109 MHz). CMA168 Tallahassee, FL, CMA359 Delaware 1-Kent, and CMA468 Maryland 2-Kent include 700 MHz spectrum being acquired by AT&T Mobility II from MilkyWay Broadband, LLC. The application was consented to on November 12, 2008. See File No. 0003489257.

³⁴ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 18. See also, e.g., *Verizon-RCC Order*, 23 FCC Rcd at 12497 ¶ 70; *AT&T-Aloha Order*, 23 FCC Rcd at 2237 ¶ 12; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 63.

regarding the unlikelihood of competitive harm resulting from those transactions,³⁵ we would find that in each of these markets there are at least two, and as many as four, other providers that currently have sufficient market share and spectrum throughout the CMA to compete in the provision of mobile telephony services.³⁶ Further, several additional firms currently hold sufficient spectrum that would enable them either to expand their provision of services or to enter the market and begin providing services.³⁷ Finally, if a current provider in any of these markets is capacity constrained, or if a new entrant would like to enter these markets, then there is sufficient unused spectrum available that could be obtained in the secondary market.³⁸

14. We note that the total amount of spectrum in portions of one of the markets included in the AT&T Mobility Auction 73 application – 109 megahertz in CMA691 Virginia 11-Madison – exceed the levels found acceptable in the *AT&T-Aloha Order* (maximum 107 megahertz) and the *AT&T-Dobson Order* (maximum 105 megahertz). Nonetheless, for the reasons set forth above, we would find that it is unlikely that the grant of the application of AT&T Mobility for licenses associated with Auction 73 would result in competitive harm in the seven CMAs identified by the initial screen.

IV. CONCLUSION

15. For the reasons stated above, we find that the public interest would be served if the above-referenced Auction 73 application of AT&T Mobility is granted. We accordingly direct the Mobility Division of the Wireless Telecommunications Bureau to process the application in accordance with this Order and the Commission's rules.

V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, that the Mobility Division of the Wireless Telecommunications Bureau SHALL PROCESS application File No. 0003382436 filed by AT&T Mobility Spectrum LLC on April 3, 2008, and amended on April 8 and 10, 2008, consistent with this Order and the Commission's rules.

³⁵ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 18; *AT&T Aloha Order*, 23 FCC Rcd at 2237 ¶ 12.

³⁶ If we were to make this determination for these markets, we would not consider or rely on information contained in the Numbering Resource Utilization and Forecast reports filed by, or disaggregated carrier-specific local number portability data related to, certain wireless telecommunications carriers with insufficient market share throughout the CMA to have a material effect on our market-by-market analysis.

³⁷ See *Union Telephone/Verizon Wireless Order*, FCC 08-257, at ¶ 18; *AT&T Aloha Order*, 23 FCC Rcd at 2237 ¶ 12.

³⁸ See *Union Telephone /Verizon Wireless Order*, FCC 08-257, at ¶ 18; *AT&T Aloha Order*, 23 FCC Rcd at 2237 ¶ 12.

17. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within thirty days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Joel D. Taubenblatt
Deputy Chief
Wireless Telecommunications Bureau